IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.1066/2005

Decided on.19.6.2007

M/s R.M. Minerals (P) Ltd. **…Petitioner.**

Versus

The Presiding Judge, Labour Court & another **…Respondents**

Coram

The Hon'ble Mr. Rajiv Sharma, J.

Whether approved for reporting ?[1].

For the petitioner : **Mr. Anup Rattan, Advocate.**

For the respondents **Mr. R.D. Kaundal, Advocate.**

Rajiv Sharma, J.

This petition arises out of the award dated 7.7.2005 passed by the learned Labour Court-cum-Industrial Tribunal, Dharamshala (camp at Una) in reference No. 86/2002.

The brief facts which are necessary for the adjudication of this petition are that on the failure of the conciliation proceedings, the State Government had made the following reference to the Labour Court-cum-Industrial Tribunal, Dharamshala:

> **"Whether the termination of the services of Shri M.C. Joshi son of Shri Kanshi Ram w.e.f. 28.11.2000 by the Management of M/s R.M. Minerals (P) Ltd., Mehatpur, District Una, H.P. without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what relief of service benefits and back wages the above workman is entitled to?"**

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgment***?

The respondent No.2 (hereinafter referred to as the workman for convenience sake) was appointed as a Clerk with the petitioner-company/employer on 1st April, 1998 on a consolidated salary of Rs. 3,500/- per month. He was subsequently designated as Personal Assistant on a consolidated salary of Rs. 6,550/-. He was terminated by the management of the petitioner-company on 28th November, 2000. He sent a demand notice to the management on 9.12.2000 and on the failure of the conciliation proceedings, the matter was referred to the Labour Court-cum-Industrial Tribunal as stated hereinabove.

In sequel to the reference made, the workman had filed the statement of claim and the petitioner-company had also filed the reply to the same. The learned Labour Court-cum-Industrial Tribunal had answered the reference in affirmative on 7.7.2005 directing the petitioner-company to reinstate the workman within a period of 90 days with 60% back wages along with interest @ 9%. He was also held entitled for a sum of Rs. 10,000/- as compensation and Rs. 3,000/- as litigation expenses along with arrears of pay at the revised rates from the date of his re-designation i.e. 1st February, 1999 till the date of his dis-engagement i.e. 28th November, 2000 retained by the petitioner-company as security.

Mr. Anup Rattan, Advocate appearing on behalf of the petitioner-company had strenuously argued that the award dated 7.7.2005 is not sustainable in the eyes of law. He also contended that the respondent was not a workman within the meaning of section 2 (s) of the Industrial Disputes Act, 1947 (hereinafter after referred to as the Act). He had also submitted that the workman had abandoned his job and thus it was not a case of retrenchment.

Mr. R.D. Kaundal had supported the award dated 7.7.2005 passed by the Labour Court-cum-Industrial Tribunal.

I have heard the parties and perused the record.

The picture which emerges from the pleadings of the parties is that the workman was appointed as Clerk on 1st April, 1998 and he was re-designated as Personal Assistant on 1.2.1999 on a consolidated salary of Rs. 6,550/-. He was terminated on 28.11.2000. The workman had appeared as PW-1 before the Labour Court and categorically stated that he was engaged initially as Clerk and thereafter promoted as Personal Assistant. It has come in the record that no appointment letter has been placed on record by the management. It has also come in the record that the duties were not assigned initially when the workman was engaged as a Clerk and thereafter as a Personal Assistant. The management has not placed on record any document to substantiate its claim when put forth by the Labour Court that the workman was promoted to the post of Personal Manager. He had also stated that no notice as stipulated under section 25-F of the Act was issued to him.

Mr. Subhodh Kumar had appeared from the management side as RW-1. He had stated that Ex. RX-1 to RX-4 were issued to the workman to join the duties, but the workman did not join his duties. The management had also examined Sh. Parmodh Kumar as RW-2 who was working in the factory as Clerk since 1999. The workman in his cross-examination has denied the suggestion that he was assigned the duties of managerial nature. In the pay slip of the workman for the month of September with effect from 1st September, 1999 to 30th September, 1999, Ex. P-7 the designation of the workman has been shown as Personal Assistant. It is also evident from the letter of the re-designation of the workman Ex.P-8 that he was re-designated as Personal Assistant with

effect from 1.2.1999. In the abstract of attendance register Ex.RW-2/A the designation of the workman has been shown as Personal Assistant. The learned Labour Court on the basis of the material placed on record had come to the conclusion that the workman was never appointed as Personnel Manager and was only discharging the duties of Personal Assistant. The Hon'ble Supreme Court has laid down the following tests whether the person will fall within the definition of section 2(s) of the Act or not on the basis of the wages paid to him or the nature of duties discharged by him:

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One thing is also evident that while re-designating the workman as Personal Assistant as per letter Ex.P-8 his salary was only notionally increased as it was mentioned therein that the increased salary will be kept as a security and will be paid to him on demand or at the time of leaving the company. The workman while appearing as PW-1 had categorically stated that even on demand his increased salary was not paid. This statement of the workman was not contradicted by the management during the course of cross-examination.

The next question requiring consideration is: Whether the workman has been retrenched in accordance with law or not? The workman while appearing as PW-1 had stated that he proceeded on leave with effect from 3.11.2000 to 27.11.2000 and his leave was sanctioned as per letter Ex.P-3. The learned Labour Court had verbatim quoted Ex.P-3 in the award. This statement of the workman was not controverted during the course of his examination. The Labour Court had come to the just conclusion that the workman was on authorized leave with effect from 3.11.2000 to 27.11.2000 and he did not absent himself from 6.11.2000 as claimed by the management. The Labour Court had not believed the

version of the management correctly that Ex. RX-1 to RX-4 were issued to the workman. The Labour Court after disbelieving the version of the management as per Ex.RX-1 to RX-4 had come to the just conclusion that the retrenchment of the workman had been in violation of the provisions of section 25-F of the Act. The learned Labour Court had also not accepted the plea of management that workman had abandoned his job after taking into consideration the entire evidence. The plea of abandonment raised by the management is a question of fact and is required to be proved which the management has failed to do so.

This Court has also perused the Annexure P-5 which is the bio-data of the workman and no support can be taken by the management on the basis of the bio-data of the workman. Ex.P-6 and P-7 though signed by the workman but are of no help to the management when the management had failed to produce on record the copy of appointment letter issued in favour of the workman appointing him as Personnel Manager. The fact of the matter is that the workman was appointed as Clerk and re-designated as Personal Assistant and had been discharging the duties of clerical nature. The management had failed to place on record any cogent and convincing evidence that the workman had been working in the supervisory of managerial capacity. Accordingly, the respondent No.2 is a workman under the provisions of section 2 (s) of the Act.

Consequently there is neither any jurisdictional error nor any procedural irregularity in the award dated 7.7.2205. Accordingly the writ petition is dismissed and the award dated 7.7.2005 is upheld. The interim order dated 23rd November, 2005 is vacated. The workman is also held entitled to costs which are quantified at Rs. 5,000/-.

(Rajiv Sharma), Judge

June 19, 2007
Awasthi